

EXHIBIT 1

**Texas Association of Broadcasters**

1907 N. Lamar • Suite 300 • Austin, Texas 78705

(512) 322-8844 • FAX (512) 322-0522

Ann Arnold, Executive Director

May 6, 1994

Mr. Roy Stewart
Chief, Mass Media Bureau
The Federal Communications Commission
1919 M Street NW
Washington D.C. 20554

Dear Mr. Stewart:

The Texas Association of Broadcasters (TAB) submits this letter in support of the petition of the National Association of Broadcasters, filed on March 3, 1994, seeking reconsideration and clarification of the FCC's January 31, 1994, Policy Statement on assessing forfeitures for EEO violations. The Policy Statement does more than merely give guidance regarding the amount of forfeiture to hand out when a violation has been found. It "also provides guidance on what situations may generally lead to such a forfeiture." Policy Statement, P6. Thus, the Policy Statement actually sets out a new definition of what constitutes an EEO violation.

TAB is particularly concerned about two aspects of the Commission's Policy Statement. First, there is the retroactive application of the forfeiture guidelines to pending license renewal applications. Although licensees have been aware of the Commission's emphasis on efforts since 1987, the Commission has never expressed a specific standard which would warrant a violation. In fact, the only criteria for evaluation expressed by the Commission before the latest Policy Statement was in the 1987 Report and Order which clearly stated that efforts would be only a part of the two-step evaluation of a licensee's EEO compliance:

The first step will be to make an initial evaluation of a station's efforts based on the full range of information available concerning its EEO record. This evaluation will examine the descriptions of the station's EEO program and policies as submitted on its Form 396 program report, and EEO complaints filed against the station or licensee, the composition of the station's workforce as submitted on its Annual Employment Report, the composition of the available labor force in the station's area, and any other pertinent information that may be available concerning the station's EEO activities.

Report and Order in MM Docket No. 85-350, 2 FCC Rcd. 3967, 3974 (1987) (emphasis added). Even the second step was merely described as involving "requests that the licensee submit additional information to the Commission concerning the specific areas of its EEO program that appear deficient." No benchmarks were detailed in the 1987 Report and Order or subsequently.

The new Policy Statement apparently turns the Commission's carefully developed EEO standards upside down by placing undue emphasis on efforts. The new Policy Statement establishes a \$12,500 base fine for failure to recruit so as to attract an undefined "adequate" pool of minority applicants, but only a \$6,250 downward adjustment for meeting the Commission's own 50% of parity standard for either hiring or employment. Licensees meeting the 50% of parity standard in both hiring and employment still can be subject to a short-term renewal and/or reporting conditions, simply because they failed to attract an arbitrary number of minority

applicants that the Commission now deems — several years after the fact and with no advance notice — to constitute an "adequate" pool.

Giving retroactive application of the Policy Statement to pending license renewals unfairly subjects licensees to a vague, *ex post facto* standard. Until January 31, licensees had no inkling that they would be subject to a fine for not attracting minority applicants for the 66% of their hires; the Commission's previous directive merely stated "If the initial evaluation indicates that a station's efforts may have been *less than satisfactory*, it will be subjected to a second-step investigation of those areas of responsibility where its efforts appear deficient." 2 FCC Red. at 3974 (emphasis added). Stations should not be penalized for not living up to a benchmark which did not exist during the license term.

Which raises the second point of concern for TAB: diminution of EEO results to merely a mitigating factor. Under the Policy Statement's "guidelines," a station which hires or employs minorities even at 100% of parity — twice the Commission's standard — merely receives a downward forfeiture adjustment of \$6,250. The station could still be fined at least \$6,250 for not attracting an "adequate" pool of minority applicants. Moreover, the station could be sanctioned with a short-term renewal — it only receives a rebuttable presumption for removal of the short-term renewal — even though it is achieving equal employment opportunity at a higher level than anticipated by the Commission.

The stated purpose of the Commission's EEO requirements is "to ensure that licensees of broadcast stations afford equal opportunity in employment." See Report and Order at 3967. The effect of the Policy Statement is to punish licensees who have achieved that result simply because they have not gone through all the new hoops established by the Commission. Indeed, one of the stations fined under the new Policy Statement's guidance had achieved 100% of parity in its hiring but had not maintained adequate records.

Granted, stations which have deficiencies in either results or efforts should be subject to further review and, where appropriate sanctions. TAB does not suggest that stations should be allowed to have no EEO program. Indeed, the Report and Order warned that the parity tests were intended to create neither quotas nor a "safe harbor." However, the Commission must recognize that results count at least as much as efforts. Fundamental fairness demands that a station's success in hiring minorities count at least as much as their tallying an arbitrary number of applicants — a number with no relation to the percentage of minorities in the local workforce of population.

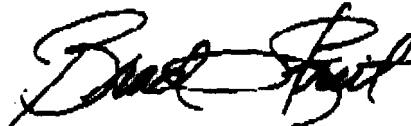
Moreover, there should be a downward adjustment for those licensees who have taken all reasonable — or even extraordinary — steps to attract minority applicants but still have been unable to do so. Otherwise, stations which do their level best to comply with the Commission's efforts requirements are penalized as much as those who make no effort. And stations in areas with minority populations significantly less than 66% are held to a standard that may be unrealistic in spite of the very best efforts they can mount.

For these reasons, we urge the Commission to grant the reconsideration and clarification sought in NAB's petition.

Respectfully,



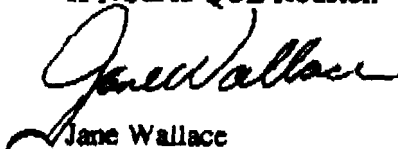
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TAB President
K-NUZ/K-QUE Houston



Brad Streit
TAB Vice President
KLTV-TV Tyler



Bill Buchanan
TAB Secretary
KSHN Liberty



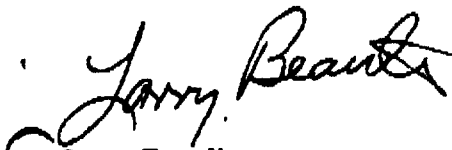
Jane Wallace
TAB Treasurer
KXAN-TV Austin



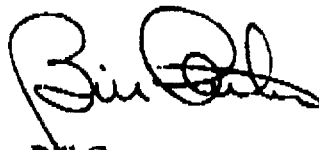
Jeff Rosser
TAB Legislative Chair
KDFW-TV Dallas-Fort Worth



J.R. Curtis
TAB Past President
KFRO Longview



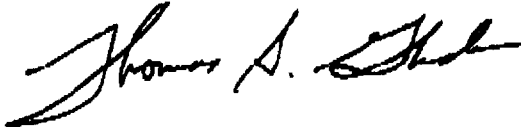
Larry Beaulieu
KFDM-TV Beaumont



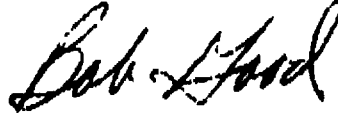
Bill Carter
KIDY-TV San Angelo



Michael Conly
KENS-TV San Antonio



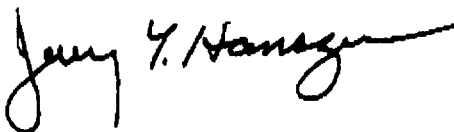
Thomas Glade
KZPS Dallas-Fort Worth



Bob Good
KXXV-TV Waco



Larry Gunter
KYKS Lufkin-Nacogdoches



Jerry Hanszen
KGAS Carthage



Bill Hill
WOAI San Antonio



Ken Lane
KVRP Haskell



Craig Reininger
KKYR Texarkana



Wayne Roy
KTAB-TV Abilene



David Wrinkle
KBST Big Spring

EXHIBIT 2

TEXAS BROADCASTERS' COSTS FOR EEO PAPERWORK

In response to the Federal Communication Commissions' request for comments from broadcasters on costs associated with the FCC's equal employment opportunity rules and guidelines, the Texas Association of Broadcasters surveyed stations across the state about the costs of the administration and paperwork needed to comply.

Radio and television broadcasters estimated the time spent by general managers and their staffs on EEO paperwork and administrative tasks and calculated its dollar value. The stations did not include information on the cost of legal services needed to assess compliance standards, recruitment costs such as paying expenses for individuals brought from outside the market for interviews or routine FCC fees or fines.

A representative sample of Texas 70 radio and 126 television stations indicates Texas broadcasters spend more than \$12 million in staff time on compliance with the EEO rules and paperwork.

One Texas radio station estimates its administrative and paperwork costs at \$69,000 a year.

For major market radio stations the average estimated cost per station is \$37,400.

Reports from television stations, particularly, and a number of the metropolitan market radio stations indicate their costs would be even higher but for the resources available to many broadcasters at this level from their corporate or group organizations and from the larger number of minorities available and wanting to work in bigger markets.

Estimated cost of EEO paperwork per station:

Metro market radio - $\$37,400 \times 124 \text{ stations} = \underline{\$4,637,600}$
Large market radio - $\$31,200 \times 169 \text{ stations} = \underline{\$5,272,800}$
Medium market radio - $\$6,300 \times 169 \text{ stations} = \underline{\$1,064,700}$
Small market radio - $\$350 \times 239 \text{ stations} = \underline{\$83,650}$

Television - $\$9,500 \times 126 \text{ stations} = \underline{\$1,197,000}$

Total = \$12,255,750

Average staff size:

Metro market radio	51	Medium market radio	15
Large market radio	30	Small market radio	8
Television	92		